IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

SMARTFLASH LLC and SMARTFLASH TECHNOLOGIES LIMITED,)))
Plaintiffs,	Civil Action No. 6:13-cv-447-JRG-KNM
v.	JURY TRIAL DEMANDED
APPLE INC., ROBOT ENTERTAINMENT,	
INC., KINGSISLE ENTERTAINMENT, INC.,	
and GAME CIRCUS LLC,	
Defendants.)))

DEFENDANT APPLE INC.'S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS RULE 50(b) RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW UNDER 35 U.S.C. § 101 (DKT. 550)

Defendant Apple Inc. submits this notice of supplemental authority to apprise the Court of two recent Federal Circuit decisions that bear on the question of patent-eligibility currently before this Court. *See* Dkt. 550. In each case, the Federal Circuit held that the patents-in-suit were ineligible under § 101 of the Patent Act. The cases are *OIP Technologies, Inc. v. Amazon.com, Inc.*, No. 2012-1696 (Fed. Cir. June 11, 2015) (a copy of which is attached as Exhibit A), and *Ariosa Diagnostics, Inc. et al. v. Sequenom, Inc. et al.*, Nos. 2014-1139, -1144 (Fed. Cir. June 12, 2015) (a copy of which is attached as Exhibit B).

In *OIP Technologies*, the asserted claims were "directed to the concept of offer-based price optimization" in e-commerce, which the court recognized to be an abstract idea. Slip Op. at 6. The asserted claims implemented this abstract idea through "programming" and hardware limitations that were "well-understood, routine, conventional activities' previously known to the

industry." Id. at 7 (quoting Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 134 S. Ct. 2347 (2014))

(alteration omitted). The court held these claims ineligible under § 101 because "relying on a

computer to perform routine tasks more quickly or more accurately is insufficient to render a

claim patent eligible." Id. at 8. The court also indicated that DDR Holdings, LLC v. Hotels.com,

L.P., 773 F.3d 1245 (Fed. Cir. 2014), is limited to claims that "recite a specific manipulation of a

general-purpose computer such that the claims do not rely on a computer network operating in its

normal, expected manner." Slip Op. at 8 (internal quotation omitted).

In the second case, Ariosa Diagnostics, the court held ineligible a patent claiming the

discovery of a certain type of DNA on the ground that the methods used to isolate the DNA were

"conventional, routine, and well understood applications in the art." Slip Op. at 13. Notably, the

court rejected the patentee's argument that a method that "does not preclude alternative methods

in the same field is non-preemptive, and, by definition, patent-eligible under Section 101." *Id.* at

14. Instead, "questions on preemption are inherent in and resolved by the § 101 analysis." *Id.*

"While preemption may signal patent ineligible subject matter, the absence of complete

preemption does not demonstrate patent eligibility." *Id.*

Dated: June 15, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2015, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to CM/ECF participants in this case.

/s/ Ching-Lee Fukuda

Ching-Lee Fukuda